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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Conservatorship of the Person and Estate of HELEN DAVIS.
LAURACK D. BRAY, Petitioner and Appellant, v. DIANNE JACKSON, Objector and Respondent.

B290858

(Los Angeles County
Super. Ct. BP159733)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. Lippitt, Judge. Affirmed.

Laurack D. Bray, in pro. per., for Petitioner and Appellant.

Jeffer Mangels Butler & Mitchell LLP and Susan Allison,
for Objector and Respondent.

Appellant Laurack Bray appeals an order of the Probate Court granting Respondent Dianne Jackson's petition, as conservator for Helen Davis, to sell Davis's residence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jackson filed an ex parte petition on April 19, 2018 for approval to sell the residence of Helen Davis (Davis), the conservatee, to provide funds for Davis's continuing care. She served the petition on Davis. The probate court set the matter for hearing on May 14, 2018, and ordered a probate panel attorney (PVP) appointed. On April 30, 2018, Jackson served notice of the hearing, attaching a copy of the petition, on Davis's son, Appellant Laurack Bray (Bray), along with other interested persons. The court continued the hearing to June 12, 2018, ordering the PVP to give notice.

The PVP prepared, filed and served a report for the hearing, after meeting with Davis. The PVP recommended approval of the petition.

The probate court heard the matter on June 12, 2018. Bray appeared, but did not file written objections. He made oral objections during the hearing, asserting that the petition failed to comply with Probate Code section 2540¹ because it did not describe the circumstances necessitating the sale, and did not describe why other alternatives were not available. He asserted he had not been served with the petition and objected to the fact that he did not "have an opportunity to respond to that in a regular proceeding by filing an objection and then having that objection heard along with her petition."

¹ All further statutory citations are to the Probate Code.

At the conclusion of the hearing, the court granted the petition, authorizing Jackson to sell the property, subject to court confirmation. Bray appealed.²

DISCUSSION

On appeal, Bray argues that the probate court erred by granting a petition that failed to comply with section 2540, by deciding the matter without affording him notice and an opportunity to be heard, and by granting an unverified petition.³

A. The Petition Provided The Information Required by Probate Code Section 2540

Section 2540 requires a conservator seeking authorization to sell a residence belonging to the conservatee to discuss the matter with the conservatee, to inform the court whether the

² On January 14, 2019, shortly after briefing was completed, Bray filed a motion for summary reversal, arguing that such a procedure would provide a “speedy determination” of the appeal. As we now resolve the appeal, the motion is denied as moot.

³ Bray makes two additional arguments. First, he asserts implied bias by the panel because of his filing of a federal criminal complaint against the author of the prior opinion in this conservatorship proceeding. While the appeal was pending, Bray filed an objection to this appeal being heard by this Division. He was advised by written order that any request to transfer the matter must be made by written motion. Bray filed a motion to transfer on February 15, 2019, which the court denied. Bray also argues that this court should hold that, in a case previously decided by the Appellate Division of the Los Angeles Superior Court, the trial court had no jurisdiction to decide the matter before it. That appeal is final, and the issue is not properly before this court. Accordingly, this opinion will not address either issue.

conservatee supports or opposes the sale, and to describe “the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including but not limited to, in-home care services, are not available.” (§ 2540, subd. (b).)

The petition in this case addressed those issues fully, describing Davis’s physical limitations, her current residence at a facility providing twenty-four hour care, and her financial inability to continue to pay for that care. The petition also describes Davis’s consent to the sale, while acknowledging that Bray’s statements to Davis he would take her home caused her to vacillate about the sale when he made them.

The showing in the petition was supported by the PVP report. The PVP interviewed Davis, and described her physical limitations, as well as her financial constraints. Davis told the PVP that she wanted to do whatever Jackson thought best, and made no objection to the sale of the property.

Accordingly, the probate court had before it, at the time of the hearing, all information required to make its decision. Bray has cited no legal authority for his claim that the petition was insufficient; moreover, there was substantial evidence to support the decision. The court did not err.

B. The Record Demonstrates Notice and The Opportunity to be Heard

Bray characterizes the hearing below as an ex parte hearing, and argues that he was not provided sufficient notice and the opportunity to object. He correctly describes the caption on the pleading, but not the substance of the hearing. The record demonstrates that proper service was made in this matter, and that the probate court continued the hearing twice, allowing Bray

time to prepare. He did in fact appear at the hearing and present argument to the court.

Section 1043, subdivision (b) provides the opportunity to make oral objections at a probate hearing; Bray was afforded that opportunity by the court. The court heard and considered his objections, and decided the matter based on evidence properly before it. The court did not err. (See, e.g., *Lammers v. Superior Court* (2000) 83 Cal.App.4th 1309, 1329 [procedural due process requires the right to be heard and adjudication after consideration of relevant competent evidence].)

C. The Issue of Verification Is Forfeited

Citing Rules of Court related to civil ex parte petitions, Bray argued for the first time in his opening brief on appeal that Jackson's failure to verify the petition mandates reversal. In his reply brief, he cited sections 1020 and 1021, requiring verification of probate petitions, and asserted that Davis's consent and the PVP report were not verified, without citing any legal authority that verification of that documentation was required. He failed to raise any of these objections at the hearing, and cannot raise them for the first time on appeal.

In order to preserve an issue for appeal, a party ordinarily must raise the objection in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, 13 Cal.Rptr.3d 786, 90 P.3d 746, superseded by statute on other grounds.) "The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law." (*People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468; accord, *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501.) Otherwise, opposing parties and trial

courts would be deprived of opportunities to correct alleged errors, and parties and appellate courts would be required to deplete costly resources “to address purported errors which could have been rectified in the trial court had an objection been made.” (*People v. Gibson, supra*, 27 Cal.App.4th at pp. 1468, 1469.) In addition, it is inappropriate to allow any party to stand silent “thus permitting the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable.” (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)

The failure to raise the issue at the hearing is even more significant in this case. The lack of verification, even where there is a statutory requirement, is not jurisdictional, but is rather a defect that can be cured by amendment, even at the time of trial. (*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915; *Conservatorship of Isaac O.* (1987) 190 Cal.App.3d 50, 55 [in conservatorship proceedings, lack of verification is not jurisdictional requirement]; see also *Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163-1164 [following *United Farm Workers*].) Bray’s failure to object precluded the opportunity to correct the claimed error; he has forfeited his ability to raise it on appeal.

DISPOSITION

The order of the probate court is affirmed. Respondent is to recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.